

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

Crl. Misc. Application No. 363 of 2006

Date of decision 08/06/2006

A.F.R. (Approved for Reporting)
~~Not approved for reporting~~

Date:- 08/06/2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 363 of 2006

Ashwani Kumar
S/o Sri Mahendra Kumar
R/o 32 Maniram Road, Rishikesh
District Dehradun Applicant

Versus

1. State of Uttaranchal
2. M/s Sadaram Rubber Industries Ltd.
Kashi Rampur Nazibabad Road
Kotdwar District Pauri Garhwal
Through its Director Sri Shiv Kumar Garg
S/o Sri Jagdish Prasad Garg
R/o Nazibabad Road Kashirampur
Kotdwar, District Pauri Garhwal Respondents

Sri Vivek Shukla learned counsel for the applicant.
Sri G.S. sandhu and Sri Lalit Verma learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the order dated 26.04.2004 passed by the Sessions Judge, Pauri Garhwal in criminal revision Nos. 24/2005 & 25/2005.

2. Brief facts of the case are that the respondent No.2 instituted two criminal cases against the present applicant-Ashwani Kumar under section 138 N.I. Act as criminal case Nos. 440/2000 & 446/2000 with the allegations that M/s Sadaram Rubber Industries Ltd.-respondent No. 2 is a firm of shoes & chappal at Kotwar and Shiv Kumar Garg is the director of this firm. The accused-Ashwani Kumar does the business of procurement & sale of shoes and Chappal in the name & style of "A.K. Footwear" at Rishikesh. The applicant-accused used to borrow the footwear from the firm of respondent no. 2 and in this way an amount of

Rs. 66,335.43 was due on the applicant-accused. In order to repay the amount, the applicant has issued two cheques of Rs. 10,000/- each. When the respondent No.2 submitted these cheques before the Bank, the cheques were dishonored by the bank due to insufficiency of funds. Thereafter, notice dated 18.05.1999 was sent by the private respondent. When the payment was not paid by the applicant, the present complaints were filed with regard to the two cheques. The statements under section 200 & 202 Cr.P.C. were recorded by the Magistrate. After appreciation of evidence, the Magistrate convicted the applicant in both the cases under section 138 N.I. Act vide order dated 4.8.2005. The applicant was directed to pay Rs. 10,000/- in each case to the respondent No. 2. The applicant was further directed to pay Rs. 5000/- in each case as fine in State Exchequer. In default of payment of fine, the applicant was directed to undergo imprisonment for a period of two months in each case. Pursuant to the said order, the applicant has deposited Rs. 15,000/- in both cases in the court of Judicial Magistrate, Kotdwar, District Pauri Garhwal. The respondent no. 2 withdrew the amount of Rs. 20,000/- which was deposited by the applicant in compliance of the order of the learned Magistrate. Feeling aggrieved by the said order, the respondent no. 2 preferred a revision against the order passed by the learned Magistrate. Learned Sessions Judge remanded the matter back to the Magistrate with the direction to hear both the parties once again on the point of sentence. Feeling aggrieved by his, the applicant preferred the present petition before this Court.

3. Learned counsel for the applicant contended that the sentence awarded to the applicant by the Magistrate is fully just and appropriate. It was further contended that the punishment awarded by the trial is adequate and commensurate with the offence. It was further contended that the Sessions Judge erred in remanding the matter to the trial court to hear both the parties on the point of sentence. Learned A.G.A. refuted the contention. It was further contended that Section 138 of the N.I. Act provides the punishment to the extent of 2 years rigorous imprisonment and the fine may extend to twice the amount of cheque and both. Careful perusal of section 138 reveals that it is not imperative for the trial court to pass the sentence of imprisonment for the guilt and the trial court can award a fine only. The only question is to be seen by this Court as to whether the punishment awarded commensurate with the offence or not. It has to be seen as to whether the applicant had paid any amount to the complainant during the pendency of the trial. It was fairly admitted by the learned counsel for the applicant that no amount was paid during the pendency of the trial. It is also pertinent to mention here that the applicant had paid the fine as well as the amount awarded as compensation. The respondent no.2 had already withdrawn the amount deposited by applicant as compensation. It is well settled principle of law that the imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime particularly in the economic nature have great impact on the social order and public interest cannot be lost sight of and per se requires exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic a

view which is against the social interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system and criminal jurisprudence. It is settled principle of law that courts should award the sentence, which reflect the need of society.. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and it could create a serious threats to the society. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. The law ordinarily allows some significant discretion to the Judge or the Court in arriving at a sentence but that sentence should be awarded judiciously and not arbitrarily. While awarding the sentence the court should see the interests of the complainant as well as the accused. There should be a balance in between the offence and the circumstance which has been pleaded by the accused. There should be no dis-balance while awarding the sentence. The law regulates the social interests, arbitrates conflicting claims and demands security of the person and property of the people is an essential function of the State. It can be achieved through instrumentality of the criminal law. Protection of the society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. After giving due consideration to the facts and circumstances of the each case for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstance in which the offence

has been committed are to be delicately balanced on the basis of really relevant circumstance in a dispassionate manner by the court.

4. In the light of the above backdrop, I would like to analyze the facts of this case. The total amount covered by two cheques involved in this case is Rs. 20,000/-. There is no case that the said amount had been paid either during the pendency of the case. The learned Magistrate should have taken into account this aspect. The offence had been committed by not paying the amount of Rs. 20,000/- where the amount covered by the cheque remain unpaid during the trial which should be looked out by the trial Magistrate., i.e., sentence for the offence u/s 138 N.I. Act should be such nature as to give proper effect of the object of legislature. The very object of Section 138 N.I. Act would stand defeated if the sentence of the nature passed by the trial Magistrate is sustained. Particularly in case of 138 N.I. Act, the amount of the cheque involved and sentence of imprisonment and fine should commensurate with each other.

5. The cheques were issued in the year 1999. The learned Magistrate convicted the accused in the year 2005 and he also awarded a compensation of Rs.10,000/- in both cases. A fine of Rs. 5000/- was also awarded by the learned Magistrate. As such, the punishment awarded by the Magistrate does not commensurate with the offence. It would be just and proper if the Magistrate would have awarded the compensation after taking into consideration the pendency of the said cases and the value of the money which had devalued during that period. The intention of

the law is not to award the imprisonment, but the intention of the law is that the person, who has suffered, should be compensated properly and the accused should have a feeling that he had been punished in the offence. The balance of the same had to be maintained while awarding the sentence by the trial court. The Magistrate had not made the balance. As such, the learned Sessions Judge was right in remanding the matter of hearing on the point of sentence.

6. There is another aspect in this matter. There were two complaints before the trial court and the applicant was convicted in both the cases separately. The separate revisions were filed. Both the revisions were dismissed by the court below. The applicant instead of filing two petitions preferred to file one petition. The applicant should have challenged both the orders passed by the learned Sessions Judge in separate petitions. The joint petition challenging two separate orders by way of this petition is not maintainable and liable to be dismissed on this ground also.

7. In view of the above, I am of the view that the Sessions Judge has rightly remanded back the matter to the Magistrate with the direction to hear the matter once again on the point of sentence.

(J.C.S. Rawat, J.)

Dated 08.06.2006
LSR